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RENEE BINDER, MD
PROFESSOR OF PSYCHIATRY
DIRECTOR PSYCHIATRY AND LAW PROGRAM
ASSOCIATE DEAN OF ACADEMIC AFFAIRS
SCHOOL OF MEDICINE

401 PARNASSUS AVENUE
SAN FRANCISCO, CA 94143-0984
PHONE: 415-476-7304
FAX: 415-502-2206
EMAIL: reneeb@lppi.ucsf.edu

June 15, 2020

Declaration of Renée Binder, M.D.

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JUN 15 2020
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

I, Renée Binder, declare and state as follows:

1. I am a physician who has been licensed to practice in the State of California since 1974. I am board certified in General Psychiatry since 1978 and in the subspecialty of Forensic Psychiatry since 1994. I have treated thousands of patients with depression, anxiety, posttraumatic stress disorder, and women who have suffered from interpersonal abuse and interpersonal violence.
2. I have done forensic evaluations since 1980. I have served as President of the American Academy of Psychiatry and the Law as well as President of the American Psychiatric Association and served as interim Chair of the Department of Psychiatry and the Director of the Langley Porter Psychiatric Hospital and Clinics at the University of California San Francisco School of Medicine from 2008 to 2011.
3. I have been retained by the government in *United States v. Elizabeth Holmes, et al.*, CR 18-258 EJD. This declaration is written to address questions raised in Ms. Holmes' OPPOSITION TO GOVERNMENT'S MOTION FOR AN EXAMINATION OF DEFENDANT ELIZABETH HOLMES PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 12.2(c), regarding the proposed psychiatric evaluation requested by the government.

Why is it necessary to audiotape an evaluation?

4. My standard practice is to audiotape all forensic evaluations. There are three reasons for this. First, when I prepare a report or testify under oath, I want to make sure that I am representing what the evaluatee said to me with 100% accuracy. I use the audiotape to ensure the accuracy, especially when I want to quote what the evaluatee said during the exam in my

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report or during my testimony. Second, I want to have a record that evaluatees said what I heard them say. Sometimes, in a forensic evaluation, evaluatees say something and then deny that they said it. It is also possible that I misheard them. It is very important to me to have a recording of what they actually said to clarify the discrepancy. Third, I audiotape my exam for my own protection. In a case in Colorado [*Dalton v. Miller*, 984 P2d 666 (Colo. App. 1999)], the court ruled that a psychiatrist could be sued for alleged misconduct of a forensic examination. The plaintiff claimed that the psychiatrist's questions were overly intrusive and caused her harm. The psychiatrist had a hard time defending himself because there was no audiotaped or videotaped record of the psychiatrist's examination. My forensic examinations are always done in a professional, respectful and appropriate manner and I have never been accused of any type of misconduct. Nevertheless, I want to have an objective record of my examination in the highly unlikely scenario that I would have to defend myself from such a claim.

Why is it necessary to have a psychological examination as well as a psychiatric examination?

5. The purpose of a forensic psychiatric evaluation is to make as accurate an assessment as possible of the issues in a legal case. Based on my professional experience, a team approach, with a psychiatrist and a psychologist, is helpful in order to fully assess and evaluate an individual's mental condition. Psychiatric examination by talking with the individual is the most important aspect of the overall forensic legal evaluation, but the individual expresses what she wants the examiner to know. Psychological testing provides an objective measure of the individual's mental health symptoms. Psychological testing provides an assessment of the presence or absence of mental symptoms, and the individual's underlying personality. The testing helps confirm diagnoses and is an important component to the overall evaluation.
6. A psychiatric examination is complementary to the psychological exam, it is not a repeat of the psychological exam. Just as independent examinations by a neurologist who examines the patient, and a neuropsychologist who tests the patient, improve the reliability of the assessment of brain damage and mental impairment, separate exams by a psychiatrist and psychologist are complementary and non-duplicative procedures. Independent psychiatric and psychological examinations increase the quality of the scientific evidence provided to the trier of fact and have been routinely employed for decades in forensic psychiatric examinations. The legal system and the triers of fact are best served by having a psychologist and a psychiatrist administer and interpret specific (and different) kinds of

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examinations that each specialist has the training, expertise, and experience to perform. As a psychiatrist, I incorporate the findings on the psychologic testing into my overall assessment.

What is the scope of my psychiatric examination?

7.

[REDACTED]

[REDACTED] I need to make an accurate and reliable diagnosis and to reach conclusions about how her mental state was affected by these diagnoses. In order to give opinions, within reasonable medical certainty, about these issues, it is important that I obtain information about pre-existing conditions and concurrent stressors which could mitigate or exacerbate the effect of trauma and interpersonal violence. An understanding of other possible stressors impacting an individual during a period of emotional distress, or the role that past emotional distress may have played in the individual's reaction to more recent events, is important in determining the nature, cause, and extent of psychological distress that could have affected her state of mind at the time of her actions.

8.

[REDACTED]

[REDACTED] My interview will include the taking of a complete personal history, work history, educational history, substance abuse history, medical and psychiatric history, a history of relationships and traumas and a legal history. A detailed questioning of the examinee is necessary to obtain a thorough account of the person's history and symptoms to help me provide an opinion about the questions asked of me.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing declaration is true and correct.

Sincerely,

Renée L. Binder MD

Renée Binder, M.D.